

## CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: 15.

Meeting Type: Regular

Meeting Date: Aug 25, 2016

Action Requested By: Finance

Agenda Type: Resolution

**Subject Matter:**

Establishing a model Installment Agreement for Taxpayers.

**Exact Wording for the Agenda:**

Resolution establishing a model City of Huntsville Taxpayer Installment Agreement.

**Note: If amendment, Please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: \_\_\_\_\_

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: M. Sanger

Date: 8/20/16

**RESOLUTION NO. 16-\_\_**

**WHEREAS**, in accordance with applicable law, the City Council of the City of Huntsville, Alabama, desires to exercise its authority to enter into installment agreements with taxpayers in order to facilitate the collection of taxes administered by the City of Huntsville, Alabama, and to establish a model agreement which the Finance Director of the City of Huntsville, Alabama, may enter into and execute on behalf of the City in accordance with the authority granted to the Director under Section 15-2 of the Code of Ordinances of the City of Huntsville, Alabama.

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, there is hereby established a model installment agreement by and between the City of Huntsville, a municipal corporation in the State of Alabama, and any eligible taxpayer, which said installment agreement is substantially in words and figures similar to that certain document attached hereto and identified as "*City of Huntsville Taxpayer Installment Agreement*", consisting of 5 pages, which the Finance Director of the City of Huntsville, Alabama, may enter into and execute on behalf of the City of Huntsville, in accordance with the authority conferred on the Director under Section 15-2 of the Code of Ordinances of the City of Huntsville, Alabama. An executed copy of each such agreement shall be kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville.

**ADOPTED** this the 25th day of August, 2016.

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President of the City  
Council of the City of  
Huntsville, Alabama

**APPROVED** this the 25th day of August, 2016.

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Mayor of the City of  
Huntsville, Alabama

## CITY OF HUNTSVILLE TAXPAYER INSTALLMENT AGREEMENT

<b>Taxpayer Name:</b> _____	<b>Tax Liability:</b> _____
<b>City Account No.:</b> _____	<b>Tax Period:</b> _____
<b>Date of Agreement:</b> _____	<b>Installment Period:</b> _____

This **City of Huntsville Taxpayer Installment Agreement** (hereinafter referred to as "Agreement") is made and entered as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Huntsville, a municipal corporation in the State of Alabama, (hereinafter referred to as "City of Huntsville" or "City") and \_\_\_\_\_, (hereinafter referred to as "Taxpayer")(collectively "Parties").

**WHEREAS**, an audit or review of the accounts and records of the Taxpayer has revealed indebtedness to the City of Huntsville as of the date of the Agreement in the above-stated amount; and

**WHEREAS**, the Taxpayer, being currently unable to pay the tax liability stated above, which has been incorporated into a final assessment, which has not been appealed within the time prescribed by law or which appeal has been rejected and resolved in favor of the City, wishes to enter into an agreement to pay, on an installment basis, the total amount due, while at the same time filing by the due date all subsequent tax returns for taxes administered by the City which become due while the Agreement is in effect, and timely remitting all taxes due in connection with the return, unless the Taxpayer has contested the validity or amount of the tax pursuant to applicable law; and

**WHEREAS**, entering into the Agreement will facilitate the collection of the tax; and

**WHEREAS**, the City of Huntsville will, for the time being, forego the institution of any action to enforce the liability so long as the Taxpayer is not delinquent on the payment of any installment on or before its due date, and so long as the Taxpayer is also not delinquent on the prompt filing of returns and payment of any taxes that become due and payable subsequent to the date of this Agreement.

**NOW THEREFORE**, in consideration of the foregoing premises, which are deemed a material part of this Agreement and are incorporated herein by reference and the mutual agreements contained herein, the City of Huntsville and the Taxpayer, for themselves and their respective heirs, personal representatives, successors and/or assigns agree as follows:

1. *Payment of installments, prompt filings, notification of changed conditions.*

(a) *Payment of installments.*

(1) The Taxpayer agrees that it owes the tax liability stated above and agrees to pay to the City of Huntsville the tax liability stated above through payments over a 12-month period, as listed in the Payment Schedule below, with the first payment due at the time of signing the Agreement. All subsequent payments shall be due on or before the 10th day of the following month. All installments shall bear interest on the

unpaid balance at the rate established per Section 15-4 of the Code of Ordinances of the City of Huntsville, Alabama ("City Code"), as such section may be amended from time to time. The City of Huntsville shall retain the discretion, through its Director of Finance, to extend the payment term for succeeding twelve-month periods if the Taxpayer complies with the terms of this Agreement. In order to extend the payment term, the Finance Director may execute a written renewal of the Agreement with the Taxpayer, provided that each renewal period does not exceed a period of twelve months.

(2) Payments shall be made by delivering or mailing remittance to:

City of Huntsville Finance Department  
308 Fountain Circle  
Huntsville, Alabama 35801  
ATTN: \_\_\_\_\_

(b) *Subsequent returns and payments.* The Taxpayer agrees to file by the due date all subsequent tax returns for taxes administered by the City which become due while this Agreement is in effect, and timely remit all taxes due in connection with the return, unless the Taxpayer has contested the validity or amount of the tax pursuant to applicable law.

(c) *Report changes.* The Taxpayer hereby agrees that any change in circumstances which would increase the ability to pay the liability must be reported to the City's Finance Department and may result in the alteration, modification, or termination of the Agreement.

2. *City's forbearance; non-waiver; termination.*

(a) The City of Huntsville agrees, for the time being, to forego the institution of any action to enforce the Taxpayer's liability to the City for the above-stated tax liability so long as the Taxpayer is in compliance with the terms and conditions of this Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, the City does not waive and hereby reserves any rights it may have under applicable law to conduct an examination, or further examination, of Taxpayer's books and records for compliance with applicable City tax laws, and to assess additional taxes for the same or for a portion of the same tax period covered by this Agreement.

(c) The City, acting through its Finance Director, may, in his/her sole discretion, terminate, alter, or modify this Agreement by providing written notice to the Taxpayer if:

(1) Information provided by the Taxpayer to the City prior to the date of this Agreement was inaccurate or incomplete;

(2) The financial condition of the Taxpayer has significantly changed;

(3) The Finance Director believes that collection of any tax to which this Agreement relates is in jeopardy, which is defined as a condition that would prohibit or impede collection of a tax assessment which is characterized by the concealment or transfer of assets or the attempt to flee the state with assets. In such case, the Finance Director may forgo the notice requirement and declare the Agreement terminated; or

(4) The Taxpayer fails to comply with the terms and conditions of this Agreement.

3. *Action in the event of Taxpayer's non-compliance.* Upon the Taxpayer's failure to comply with the terms and conditions of this Agreement the City shall, in addition to all other rights and remedies available to the City in law or equity, or pursuant to this Agreement, be entitled, at its sole discretion, to do all or any of the following:

(a) Through its Finance Director, declare as immediately due and payable all of the said installments then remaining unpaid and the same shall thereupon become immediately due. The City, through its Finance Director, may declare the entirety of the unpaid installments immediately due and payable by sending notice via personal delivery or first class U. S. mail to the Taxpayer at the Taxpayer's last known address on file with the City's Finance Department. The City may then immediately exercise the remainder of its rights hereunder or otherwise collect the balance due by any method allowed by law.

(b) Act to revoke, suspend, or not re-new the Taxpayer's City of Huntsville business license and/or seek a forfeiture of any the liquor bond posted in accordance with Section 3-90 of the City Code, as such section may be amended from time to time, and to further act to close and padlock the business, or in its sole discretion, to seek judicial assistance in closing and padlocking the business.

4. *Further security.* As further security for the prompt payment of the said installments, the Taxpayer, for itself and its heirs, personal representatives, successors and/or assigns, hereby:

(a) Waives all rights of exemption of property from levy and sale under execution and other process under the laws of the State of Alabama or any other state; and

(b) Agrees that any refund which may be due to the Taxpayer from the City while the Agreement is in place may be credited to the above-stated tax liability; and

(c) Specifically authorizes the City to file tax lien(s) with the probate judge or other appropriate authority for the tax indebtedness noted above and for any subsequent tax indebtedness incurred by the Taxpayer while this Agreement is in effect, and waives any and all notice, process or procedure due, or any other right or rights Taxpayer may have under applicable City, state, or federal law in regard to the said tax lien(s); and

(d) Waives any entitlement it may otherwise have under the laws of the state and the City to confidentiality to the extent required to permit the City to file an action in open court to collect taxes, to file tax lien(s) with the appropriate probate judge or other authority and/or to otherwise enforce this Agreement ; and

(e) Gives his/her/its permission and approval to the City, its officials, officers, and employees, and to legal counsel the City has retained to enforce this Agreement, to print, publish, or divulge confidential tax information, including, but not necessarily limited to, Taxpayer's tax returns or any part of the return, or any information secured in arriving at the amount of tax or value reported, in order to enter into this Agreement and to perform or otherwise administer and enforce all acts contemplated under this Agreement, including but not limited to, the filing of tax lien(s); and

(f) Waives demand, protest, notice of protest and all requirements necessary to hold him/her/it as the maker of said indebtedness; and

(g) Agrees to pay all costs (through appeal), including, but not limited to, a reasonable attorney's fee, incurred by the City in the collection or attempt to collect any of the said installments, or to otherwise enforce this Agreement.

7. *Miscellaneous.*

(a) The Taxpayer, by its execution of this Agreement, acknowledges, warrants, covenants, and agrees that: (1) he/she/it has read and understood this Agreement, (2) he/she/it has entered into this Agreement voluntarily without any coercion, undue influence, or duress, (3) he/she/it has all requisite authority to enter into this Agreement and to perform all acts contemplated herein, and (4) the person executing this Agreement on behalf of the Taxpayer is duly authorized to do so and to bind Taxpayer thereby.

(b) This Agreement shall be binding upon and shall enure to the benefit of each of the Parties and their respective successors, personal representatives, heirs and/or assigns. Reference herein to Taxpayer shall be construed to include those whose name(s) are above given as Taxpayer, whether one or more individuals or a corporation or other entity, and also be construed to include any personal guarantor listed below.

(c) This Agreement constitutes the entirety of the Agreement between the Parties and any previous agreements or understandings not represented in this Agreement are hereby withdrawn and superseded by this Agreement.

(d) The City's failure to exercise or delay in exercising any right, power or privilege under this Agreement, and/or the City's acceptance of partial payment, shall not operate as a waiver, accord, or satisfaction; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.

(e) This Agreement may be amended or modified only by a written instrument executed by both Parties.

(f) This Agreement shall be construed, controlled, enforced, governed, and interpreted in accordance with its plain meaning in accordance with the internal laws of the State of Alabama, without regard to principles of conflicts of laws. For any action concerning this Agreement (1) jurisdiction shall be in the appropriate state or federal courts sitting in Alabama and (2) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

(g) The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the intent or scope of the agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first above written.

**TAXPAYER**

By : \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY OF HUNTSVILLE**  
a municipal corporation  
in the State of Alabama

By: \_\_\_\_\_

**Personal guarantee (to be executed by responsible corporate officer where Installment Agreement concerns trust fund taxes):**

I hereby personally guarantee and pledge my own separate assets as well as the assets of any business in which I am involved to satisfy the debt herein, and I authorize the City of Huntsville to proceed directly against me and any business interests I have in the event the obligations set out above are not satisfied:

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Payment Schedule				
Period	Beg. Balance	Interest	Payment	Remaining Balance
Month 1	\$	\$	\$	\$
Month 2	\$	\$	\$	\$
Month 3	\$	\$	\$	\$
Month 4	\$	\$	\$	\$
Month 5	\$	\$	\$	\$
Month 6	\$	\$	\$	\$
Month 7	\$	\$	\$	\$
Month 8	\$	\$	\$	\$
Month 9	\$	\$	\$	\$
Month 10	\$	\$	\$	\$
Month 11	\$	\$	\$	\$
Month 12	\$	\$	\$	\$